

REMARKS

Claims 1-9 are currently pending in this application (claims 10-17 being previously withdrawn).

Summary of the Action

Claims 1-9 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Published Application No. 2004/0193068 to Burton (hereinafter “Burton”) as modified by U.S. Patent No. 5,626,140 to Feldman (hereinafter “Feldman”).

Applicant’s claims are allowable over the prior art

The Office Action rejects claims 1-9 under 35 U.S.C. § 102(e) as being anticipated by Burton modified by Feldman. These rejections are respectfully traversed.

To establish a prima facie case of anticipation under 35 U.S.C. § 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. MPEP 2131. Applicant respectfully maintains that these criteria have not been met for Burton modified by Feldman as applied to all claims of the present invention.

Burton discloses an apparatus for monitoring consciousness that focuses on accuracy in monitoring, analyzing, detecting, predicting and/or providing alerts and alarms associated with depth of anesthesia, depth of consciousness, hypnotic state, sedation depth, fatigue or vigilance of a subject. However, Burton does not disclose an electronic controller as in claims 1 and 9 of the present invention.

Claim 1 recites, in part, “an electronic controller including parameters of at least one of said monitored patient physiological conditions, said electronic controller interconnected with the patient health monitors, the user interface, the drug delivery controller, and the effector, wherein said electronic controller receives said signals, compares said signals to ascertain whether the monitored data is reliable by determining if the monitors are in agreement, and controls the effector based on the results of the comparison and in accordance with the parameters.” Claim 9 recites a similar limitation. Burton discloses “a method and apparatus for monitoring a patient’s stress and anxiety levels together with a range of vital parameters to minimize the risk that the

patient is undergoing undue stress, anxiety and health conditions during anaesthesia, and subsequently reducing or eliminating the incidence of these states.” Burton, para [0026]. However, this cited paragraph and Burton do not disclose “an electronic controller including parameters of at least one of said monitored patient physiological conditions... wherein said electronic controller ... controls the effector based on the results of the comparison and in accordance with the parameters” as claimed in the present invention. The “vital parameters” mentioned in Burton are monitored, like the patient’s stress and anxiety levels. However, the parameters of the present invention are not monitored from the patient but rather are included in the electronic controller and are the parameters that represent one or more safe and undesirable patient physiological conditions as explained in paragraph [0019] of the Specification. Burton does not disclose such parameters, nor controlling an effector in accordance with such parameters.

Thus Burton fails to teach or suggest all the elements of independent claims 1 and 9 of the present invention. Feldman fails to remedy this deficiency as Feldman also does not disclose, teach, or suggest an electronic controller including parameters of at least one of said monitored patient physiological conditions that compares multiple monitor signals to ascertain whether the data is reliable by determining if the monitors are in agreement and then controls the effector based on the results of that comparison in accordance with the parameters.

In light of the above amendments and remarks, it is respectfully submitted that the outstanding rejection of the above claims as being anticipated by Burton modified by Feldman is improper. Thus, Applicant respectfully submits that claims 1 and 9 are allowable.

Claims 2-8 depend directly or indirectly from claim 1 and incorporate the limitations of the base claim. Thus Applicant respectfully submits that claims 2-8 are not anticipated by Burton modified by Feldman for at least the reasons recited with respect to claim 1 above.

Appropriate reconsideration and withdrawal of the rejection of claims 1-9 under 35 U.S.C. § 102 is respectfully requested.

Conclusion

In view of the foregoing, Applicant respectfully requests that the Examiner examine the application upon the merits, and that the above remarks be fully considered in conjunction therewith. Timely allowance of all currently pending claims and the issuance of a Notice of Allowance are requested.

Applicant has filed this Response and Amendment without increasing the number of claims above the number previously submitted or paid for. Accordingly, no additional claims fees are believed to be due at the present time. If such fees or any other fees associated with the filing of this paper are due at this time, please charge the fees to our Deposit Account No. 50-1349. Also, please credit any overpayments to Deposit Account No. 50-1349.

The Examiner is invited to contact Applicant's undersigned representative via telephone if such would expedite prosecution of this application toward allowance.

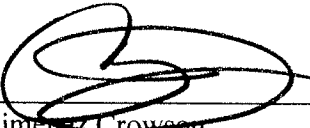
Respectfully submitted,

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